United Nations CAT/C/CHN-MAC/Q/5

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues in relation to the fifth periodic report of Macao, China*

Articles 1 and 4

1. In the light of the Committee's previous concluding observations (CAT/C/MAC/CO/4, paras. 4 and 5), please update the Committee on the measures taken or envisaged to define and criminalize torture in its Penal Code in full conformity with articles 1 and 4 of the Convention, and in particular to:

(a) Adopt a more inclusive definition of the term "public official" so as to clearly include all acts inflicted by or at the instigation of, or with the consent or acquiescence of, any public official or other person acting in an official capacity;[1]

(b) Ensure that the definition comprises all elements contained in article 1, including discrimination of any kind;[2]

(c) Ensure that the crime of torture constitutes one single offence subject to the relevant aggravating circumstances applicable to the crime of torture.[3]

Article 2[4]

2. Please inform the Committee how the independence of the ombudsman mandate of the Commission against Corruption is guaranteed and whether it is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). In this context, please indicate whether the Commission is mandated to receive and consider complaints from individuals. If so, please

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

[1] CAT/C/MAC/CO/4, para. 4; CAT/C/CHN-MAC/5, paras. 5–11.

[2] CAT/C/MAC/CO/4, para. 4; CAT/C/CHN-MAC/5, paras. 12 and 13.

[3] CAT/C/MAC/CO/4, para. 5; CAT/C/CHN-MAC/5, paras. 34–41.

[4] The issues raised under article 2 could also be addressed under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

provide information on the number of complaints received relating to torture and ill-treatment during the reporting period and on the action taken. Can the Commission or any other independent body carry out unannounced visits to detention centres and, if so, have any been made during the reporting period? Alternatively, does Macao, China intend to establish an independent statutory human rights institution in accordance with the Paris Principles, as recommended by the Human Rights Committee (CCPR/C/CHN-MAC/CO/1, para. 8)?[5]

3. With reference to paragraphs 16 and 17 of the periodic report (CAT/C/CHN-MAC/5), please provide further details on the content of Law 1/2009 and its practical implementation since it came into force. In particular, please explain how it ensures basic safeguards for all persons deprived of their liberty and to what extent the law guarantees free legal assistance to all who require it and who would otherwise have no such assistance. Please clarify in what cases the access to a lawyer could be impeded when "lacking prior authorization".[6]

4. In the light of the Committee's previous concluding observations (CAT/C/MAC/CO/4, para. 9) and noting the ongoing efforts of Macao, China to combat trafficking in persons,[7] please provide further, updated information on:

(a) The extent of trafficking in the country[8] and the number of complaints (specifying the cases reported through the 24-hour reporting hotline), investigations, prosecutions (specifying the offences) and sentences handed down for the crime of trafficking during the reporting period, disaggregated by year and the victims' sex, age and ethnic origin[9] or nationality. Please also include the reasons why cases were dismissed. Have there been any cases of alleged complicity of government officials in these offences?[10] If so, please indicate whether investigations have been carried out, as well as the results of any such investigations.

(b) Measures taken to address the problem of child sex tourism;[11]

(c) The specific impact of the work carried out by the Human Trafficking Deterrent Measures Concern Committee.[12] Please also indicate the number of law enforcement personnel who have undergone training on combating trafficking in persons and who conducts such training;[13]

(d) The number of services, assistance and protection provided to victims of trafficking through the victim protection scheme, as mentioned in paragraph 111 of the periodic report (CAT/C/CHN-MAC/5). Please specify the types of protection and reparation, including compensation, provided to victims during the reporting period.[14] What safeguards are in place to ensure that trafficked persons are treated as victims and not

[5] See also CCPR/C/CHN-MAC/Q/1/Add.1, paras. 16 and 18; CEDAW/C/CHN/CO/7-8, paras. 70 and 71, and CRC/C/CHN/CO/3-4, para. 20.

[6] See also CAT/C/CHN-MAC/5, para. 72.

[7] Ibid., paras. 91–113.

[8] See follow-up letter sent to the State party: request for clarification, 2010, p. 2.

[9] See CERD/C/CHN/CO/10-13, para. 32.

[10] CRC/C/CHN/CO/3-4, para. 87.

[11] Ibid., para. 87.

[12] See CAT/C/CHN-MAC/5, para. 94.

[13] CAT/C/CHN-MAC/5, para. 105, and follow-up letter sent to the State party: request for clarification, 2010, p. 2.

[14] CERD/C/CHN/CO/10-13, para. 32.

criminalized?[15] Please also indicate the policies and procedures in place to identify victims of trafficking, in particular child victims;[16]

(e) Available legal alternatives to victims who may face hardship and retribution upon removal.[17] How many victims have benefited in practice from these alternatives? Do repatriation efforts include an assessment of the safety and security of victims, in particular child victims, following return home?[18]

(f) The number of cases uncovered as a result of the agreement on cooperation in combating human trafficking with the Government of Mongolia signed on 18 October 2010.[19] Does Macao, China have multilateral, regional or bilateral agreements with other countries from or to which individuals are trafficked in order to combat this practice?

5. Please provide updated information on steps taken to prevent and combat gender-based and domestic violence. In this regard, please:

(a) Indicate the progress made towards elaborating the Law on the Prevention of Domestic Violence. With reference to the recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 73), please also include detailed information on the legislation itself;

(b) Indicate the measures of protection, redress and rehabilitation offered to victims of such violence[20] and measures taken to raise awareness among the population. Has Macao, China conducted studies on the magnitude and root causes of domestic violence, as recommended by the Human Rights Committee (CCPR/C/CHN-MAC/CO/1, para. 10)?

(c) Update the Committee on the number of complaints received concerning acts of domestic and gender-based violence, investigations into such complaints, sentences handed down and reparations provided;

(d) Provide information on steps taken or envisaged to enact specific legislation prohibiting sexual harassment in all settings, including in the workplace.[21]

Article 3

6. Please provide statistical data for the period under review, disaggregated by year and age, sex and country of origin of the person concerned, on the number of:

(a) Asylum requests registered;

(b) Victims of torture identified among asylum seekers;

(c) Requests for asylum, refugee status or other forms of humanitarian protection that were granted, indicating, when applicable, the number of cases in which protection was granted in application of the principle of non-refoulement;

(d) Persons extradited, expelled or returned and the countries to which they were expelled or extradited;

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[15] CAT/C/MAC/CO/4, para. 9 (b).
[16] See CAT/C/CHN-MAC/5, para. 107.
[17] CCPR/C/CHN-MAC/CO/1, para. 13
[18] See follow-up letter sent to the State party: request for clarification, 2010, p. 3.
[19] CAT/C/CHN-MAC/5, para. 113.
[20] See also E/C.12/CHN/CO/2, para. 55.
[21] CCPR/C/CHN-MAC/CO/1, para. 10; see also E/C.12/CHN/CO/2, para. 55.

(e) Appeals against expulsion or extradition decisions on the basis that applicants might be in danger of being subject to torture in their countries of destination, and the results of those appeals.

7. Please provide information on the procedure used to identify victims of torture from among asylum seekers.

Articles 5 to 9

8. In the light of the Committee's previous concluding observations (CAT/C/MAC/CO/4, para. 6) and with reference to paragraphs 44 and 45 of the periodic report (CAT/C/CHN-MAC/5), please clarify the relationship of articles 5 (2) of the Criminal Code, which provides that the Code also applies to acts committed abroad if the obligation to prosecute arises from an international convention binding on Macao, China, and 5 (1) (c) of the Penal Code, which establishes that the exercise of extraterritorial jurisdiction with respect to torture offences (art. 234 of the Criminal Code) requires double criminality.[22] Please further indicate whether Macao, China has ever prosecuted anyone present in its territory who has committed a crime of torture abroad and whether article 5 (2) of the Criminal Code has already been invoked to establish jurisdiction.

9. Please update the Committee on any progress with respect to negotiations with mainland China with a view to regulating the transfer of offenders from Macao, China to the mainland and to ensuring their protection against the risk of the death penalty, torture or ill-treatment upon return, as recommended by the Human Rights Committee (CCPR/C/CHN-MAC/CO/1, para. 11).

10. Please provide information on cases, if any, where the authorities of Macao, China rejected a request for extradition of a person alleged to have committed any offences under the Convention, and engaged in their own prosecution as a result, since the consideration of the previous periodic report (CAT/C/MAC/4). Please also provide information on cases in which mutual assistance was requested by or from Macao, China. Please include the results of such requests.

11. With regard to paragraph 58 of the periodic report (CAT/C/CHN-MAC/5), please update the Committee on any progress concerning negotiations of bilateral or regional agreements on mutual legal assistance in criminal matters with mainland China, Hong Kong, China[23] and other countries or regions.

Article 10

12. With regard to paragraphs 59–69 of the periodic report (CAT/C/CHN-MAC/5), please provide details of training on human rights and on the treatment of detainees and measures to prevent torture and ill-treatment received by prison staff, law enforcement officers, the judiciary, officials dealing with the expulsion, return or extraditions of foreign nationals and any other professionals involved in the custody, questioning or handling of persons deprived of their liberty under State control. Please specify the frequency, type and effectiveness of this training and indicate the steps taken to assess its effectiveness. With reference to paragraph 61 of the periodic report, please also clarify whether law enforcement officers receive mandatory training on the prohibition of torture. Does the training cover international standards related to the treatment of children in custody/care and gender- and culture-sensitive treatment, as well as non-coercive investigation techniques? Please also include information on the use of the Convention and the Manual

[22] See CAT/C/CHN-MAC/Q/5, para. 99.

[23] See also ibid., para. 103.

on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) as a basis for such training.

13. In the light of the Committee's previous concluding observations (CAT/C/MAC/CO/4, para. 7) and with reference to paragraph 67 of the periodic report, please provide details about the training course for health-care professionals on how to identify and handle victims of torture. Has that training already taken place? If so, please provide updated statistical information regarding these training sessions. In particular, who carries out these training, how often do the sessions take place and how many medical practitioners have undergone such training to date, disaggregated by medical degree and employer (public hospital, Macao prison, private hospitals and private licensed doctors)? On which training materials are the sessions based and does it include a component on providing rehabilitative services?[24] Please also indicate whether health-care professionals are given training on gender-sensitive treatment. In addition, please provide information on the efforts undertaken to promote and disseminate the Convention and the Istanbul Protocol among health-care professionals.[25]

Article 11

14. Please provide updated statistics, disaggregated by sex, age and nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention.

15. In the light of the Committee's previous concluding observations (CAT/C/MAC/CO/4, para. 8) and referring to paragraphs 78–82 of the periodic report (CAT/C/CHN-MAC/5), please clarify whether Order 19/SS/2009 (relating to children aged 17 and 18) and Order 91/DSAG/2009 (relating to children aged from 12 to 16) limiting the use of solitary confinement are binding on the Macao prison and the Young Offenders Institute, respectively. Please inform the Committee of the steps taken to prohibit and abolish solitary confinement as a punishment for children in all cases, including solitary confinement ordered by the court, for medical reasons and as a special security measure, and whether all children have been removed from solitary confinement, as recommended by the Committee on the Rights of the Child (CRC/C/CHN/CO/3-4, para. 95). Please also provide statistical information on the frequency, duration and causes of children between the ages of 12 and 16 being placed in an "individual sleeping room" and indicate whether there are a maximum number of days per year during which a child can be placed in such a room?[26] In addition, please provide information on any oversight and monitoring mechanisms established to ensure compliance with both orders, as well as whether child-sensitive complaint mechanisms exist.

16. With reference to the previous paragraph, please further provide information on the extent to which Macao, China has used solitary confinement during the reporting period in detention and medical settings in general, including the number, sex and age of persons placed in solitary confinement and the duration of such confinement. Please also indicate the regulations applicable to the imposition and use of restraints and solitary confinement. In particular, please include information on the safeguards in place to ensure that the use of restraint and solitary confinement are not arbitrary and excessive.

17. According to information before the Committee, electric shock devices, including body-worn electric shock weapons, may be used for prisoner transfers in Macao, China. Please provide information on whether such devices are used and, if so, for what purposes.

[24] See also follow-up letter sent to the State party: request for clarification, 2010, pp. 1–2.
[25] See CAT/C/CHN-MAC/5, para. 69.
[26] CAT/C/MAC/CO/4/Add.1, para. 8; CCPR/C/CHN-MAC/CO/1, para. 12.

Please also include information on the relevant guidelines established and whether prison guards and, if relevant, other law enforcement officers have received training on the use of such devices.

Articles 12 and 13

18. With reference to paragraph 85 in the periodic report (CAT/C/CHN-MAC/5), please indicate the body that processed the 87 complaints against security forces and the staff of the security department. How is the independence of this body ensured? Please include information as to its composition, mandate, activities and safeguards established. Please also comment on the fact that 87 complaints involving 172 people only resulted in three closed internal disciplinary procedures and five fines, as mentioned in paragraph 86 of the periodic report. Have any of the 172 persons involved received any kind of financial compensation or other type of redress? If so, please specify the redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families. Please also include information on the internal complaints procedure available to persons deprived of their liberty.[27]

19. With reference to paragraphs 85 and 86 of the periodic report (CAT/C/CHN-MAC/5), please provide updated statistical data, disaggregated by sex, age, ethnicity or nationality and place of detention, on complaints of acts of torture and ill-treatment recorded during the period covered by the report. Please include information on resulting investigations, disciplinary and criminal proceedings, convictions and penal or disciplinary sanctions applied.

Article 14

20. With reference to paragraph 87 of the periodic report (CAT/C/CHN-MAC/5), please provide updated information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture or their families, disaggregated by sex, age and nationality of the claimant since the last periodic report. Please include the number of requests for compensation made, the number granted, the amounts awarded and those actually paid in each case. Please also include updated and detailed information on the rehabilitation programmes, including medical and psychological assistance provided to victims of torture and other ill-treatment. In addition, please indicate whether foreigners and illegal migrants can benefit from these measures and programmes, including whether they can obtain redress for acts of torture and other ill-treatment.[28]

Article 16

21. Please indicate the measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings, including in the home and in alternative care and day-care settings. Please also provide information on efforts to promote positive, non-violent and participatory forms of child-rearing and discipline and to train relevant professionals and raise awareness about harmful effects of corporal punishment.

22. Please provide information on the measures adopted to prevent and punish corruption in the Macao prison.

23. Please inform the Committee of the resources allocated to the health of prisoners and detainees.

[27] CAT/C/CHN-MAC/5, para. 83.

[28] CAT/C/MAC/4, para. 205.